

MINUTES
IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND
PROGRAM

April 25, 2008

COMMISSIONER'S CONFERENCE ROOM
IOWA INSURANCE DIVISION, 330 EAST MAPLE STREET
DES MOINES, IOWA

Susan Voss, Chairperson, called the Iowa UST Board meeting to order at 10:02 A.M. A quorum was present. Roll call was taken with the following Board members present:

Jacqueline Johnson (via telephone)
Nancy Lincoln (via telephone)
Tim Hall (for Richard Leopold)
Doug Beech
Jim Holcomb

Also present were:

David Steward, Attorney General's Office
Scott Scheidel, Program Administrator
James Gastineau, Program Administrator's Office
Brian Tormey, Iowa Department of Natural Resources

APPROVAL OF PRIOR BOARD MINUTES

The minutes from the March 27, 2008 Board meeting were reviewed. Mr. Holcomb moved to approve the minutes, Mr. Beech seconded the motion, and by a vote of 6-0, the minutes were approved.

CLOSED SESSION

Ms. Voss noted there were no matters dealing with litigation for discussion in closed session pursuant to Iowa Code Chapter 21.

PUBLIC COMMENT

Ms. Voss requested any comments from the public present. Tom Norris from Petroleum Marketers Management Insurance Company addressed the Board regarding the informal proposal from PMMIC to enter into a loss portfolio transfer with the Board that had been discussed at prior Board meetings. Mr. Norris was aware of the necessary defeasement of bonds issue resulting from recent

legislation; however he hoped the Board would move forward with the issuance of the request for information (RFI) to determine the field of interest among third parties for considering a loss portfolio transfer of Board liabilities. He noted that the Board might consider a loss portfolio transfer as a way to protect Fund monies from future diversion for other State projects.

BOARD ISSUES

A. Legislative Update

Mr. Scheidel provided the Board with a memo regarding legislation passed by the State legislators. He also discussed the effect of legislation on the Iowa UST Fund Program and provided a memo from bond counsel, David Van Sickle of Davis, Brown, Koehn, Shors & Roberts, P.C., regarding the defeasance of bonds.

Mr. Scheidel explained that the appropriations bill was passed, and he didn't see mention of the UST Fund in that one. He reported that another bill (HF 2662), for the Agriculture and Natural Resources budget, did pass and directly affected the Iowa UST Fund. The Senate amended the bill from the House adding in a diversion of \$1,725,000 from the Iowa UST Fund to the Snowmobile Fund and ATV Fund. Mr. Scheidel noted that he could request a line item veto of the diversion from the Governor, based on the effects from the TIME 21 bill on Iowa UST funds, as well as the constitutionality of the wording of the amendment which excluded a provision to "notwithstanding" Iowa Code 455G.3. He requested the Board's guidance in regard to the request. Mr. Steward explained that he had encountered contradictory laws, and most often the later law was more specific and would supercede the earlier law, however in this case, the previous law was more specific and directed to the General Assembly and the later law was less specific and not directed to the General Assembly, therefore creating a construction issue. The will of the Board was to notify the Governor's office regarding the construction problem, as well as, the idea that a diversion from one fund to reimburse a fund that must be reimbursed for past a diversion was ironical at best. Mr. Scheidel also offered to discuss the effects of TIME 21 on the Iowa UST Fund balances. The Board agreed.

Mr. Scheidel explained the TIME 21 bill to the Board, as it affects the Iowa UST Fund. He explained that the legislation changed the way Road Use money was funded. The change included the idea that \$17M of the Environmental Protection Charge collections would be directly deposited into the Iowa UST Funds, rather than into the Road Use fund and then dispensed to Iowa UST from Road Use. The Road Use funds provided the security for the bonds, and now the pool of money from which the Board received its \$17M per year would be much smaller. The bondholders now would have a perception, real or otherwise, that the security for the bonds had changed. The ratings on the bonds specifically referenced the larger pool of money from which the Board received its annual \$17M, therefore the credit rating could change or bondholders could issue lawsuits for the change in security on the bonds they hold.

Mr. Scheidel advised that to remove the risk the Board could pay off the 1997 bonds and defease the 2004 bonds, which can not be directly paid off. The defeased funds would provide security for the bondholders, as the money to repay the bonds would be set aside and untouchable for reasons other than bond repayment. He referred to the memo from David Van Sickle, bond

counsel, regarding the structure of the defeasance. Also, the Board discussed the effect of the defeasance on Fund balances. Mr. Scheidel advised that the Board would have to make decisions regarding moving money from one UST Fund to another as the balances of some would be depleted. For example, the Innocent Landowner Fund had never been used for anything other than the payment of innocent landowner claims, and that money would have to be moved in part.

Mr. Scheidel also noted that he needed to notify the trustee that the Board intended to redeem the 1997A Series bonds by June 30, 2008. Mr. Holcomb submitted a motion to give the Administrator the authority to move forward with the pay off of the 1997A Series bonds for approximately \$18.3M. Mr. Beech seconded the motion, which was approved by a vote of 6-0.

Mr. Scheidel noted that the Board had a statutory obligation, due to TIME 21 legislation, to defease the 2004A Series bonds by June 30, 2008. He had inquired from the Treasurer's Office about process but had not heard back as of this meeting date. Ms. Voss requested that Mr. Scheidel share any information he received from the Treasurer with the Board members as soon as he hears.

Mr. Scheidel asked the Board how to proceed with regard to the loss portfolio transfer (LPT) proposed by PMMIC, as previously discussed. The Board had planned to issue an RFI to determine interest from third parties. That plan had been on hold while TIME 21 legislation was pending. Now that TIME 21 had passed, the Board felt they should await information regarding the state of the UST Funds after the 1997 bonds are redeemed and the 2004 bonds are defeased. Mr. Hall inquired about the downside to issuing a RFI while working out the details of Fund balances at the same time. Mr. Scheidel and Mr. Steward indicated that the Board had not decided whether or not to enter into a LPT, and soliciting information without intent to move forward with a request for proposal (RFP) might be ill-perceived if the Board chose to do nothing with the information.

After additional discussion, Mr. Scheidel mentioned that 455G.6, which gave the Board authority for bonding, was set to expire at the end of the next fiscal year. Ms. Voss summarized that the Board would await information regarding the Fund balances, and the Board could then discuss their options for RFI for an LPT.

B. SIC Model (RBCA) Rule Status

To recap, Mr. Scheidel explained that the DNR had decided that after 10 years of risk based corrective action assessments of leaking underground storage tank (LUST) sites, the model for classifying sites should be recalibrated. After commissioning the creator of the RBCA model for assistance, a group of stakeholders - the software investigation committee - recommended specific changes to the model. Mr. Hall had noticed the discussion and invited interested parties, including members of the water supply community, to be involved in stakeholder discussions; however no one from the water supply community had chosen to participate in the discussions early on.

Mr. Scheidel explained that when the Department of Natural Resources (DNR) went to file the RBCA change into rule, the resulting rule language submitted to the Environmental Protection Commission (EPC) by DNR staff included additional items beyond the scope of the SIC recommendation. After feedback, the rule was pulled from the EPC agenda, revised and re-filed with EPC and pulled again. The third filing still included ancillary items dealing with the potential for a water supply well outside of the modeled plume to pull in LUST contamination. After additional comment from stakeholders, EPC requested a regulatory analysis from the DNR after working with stakeholders.

Mr. Scheidel noted that the argument from some stakeholders was that the authority being suggested in the rule would be applied to all LUST sites, rather than being used on an exceptional basis, and the DNR had not yet supplied examples where the additional authority would have benefited the assessment and outcome of a site. Mr. Beech inquired about the Board's options for their participation. After a brief discussion, Mr. Scheidel cautioned that the Board would want to be careful and not hurt claimants by not paying for work that the DNR was requiring those claimants to complete.

Brian Tormey of the DNR addressed the Board regarding water supply wells outside of the simulated plume of a LUST site. He explained that the EPC had requested the DNR work with stakeholders to come to a consensus. He also stated that the Administrative Rules Review Committee had requested the DNR complete an informal analysis, without much direction about what that should be.

Mr. Tormey noted that groundwater professionals had the authority to require a RBCA Tier III, which consisted of three-dimensional assessment for sites with a water supply well receptor, to prove to DNR that a well would not be impacted. He explained that DNR should have the same authority in rule to require a Tier III where they think a water well would be impacted. He noted that he thought that all were in agreement that some sites with water well receptors should be investigated to see if they could be impacted. Mr. Tormey stated that in some ways the DNR programs (i.e. water quality and LUST) overlap responsibilities and in some ways these programs leave gaps. He stated that water supply well receptors, even if outside a modeled plume, might be most conveniently addressed by the LUST section in order to fill the gaps. He explained that DNR had proposed the formation of source water protection team, which could have a Tier III completed, without putting the burden on the responsible party, to assess the risk to a water well receptor. Then if the assessment didn't clear the receptor, the resulting work required to address it would fall back to the responsible party.

Mr. Scheidel brought up the role of the groundwater professionals as the basis of the Program, as they were relied upon for their judgment and expertise, while the DNR had both certification authority and review of their work oversight. Additionally, the RBCA model was created to conservatively screen LUST sites for risk by simulating a plume, thereby creating a line beyond which receptors would not be of concern – because it was an over-predictive line initially. Groundwater professionals had authority to clear a receptor within the plume by using a Tier III model, as well, for the very reason that the RBCA model was over-predictive in scope. However, many stakeholders could not come to terms with why the DNR should authorize the

use of the Tier III to assess receptors that were not modeled at-risk within this over-predictive assessment.

Mr. Beech agreed that changing the rule would not be fair to the responsible party, especially operating UST owners and operators.

Mr. Scheidel noted that the ability to address the gaps in authority between DNR programs might fall to the LUST section simply for funding reasons only. He referenced an earlier problem between Water Supply and LUST, when Water Supply was granting permits to install plastic water lines through LUST plumes; and any discovery would be handled by the LUST section and paid for by the Iowa UST Fund. The Iowa UST Fund Board took a stance to oppose that practice and refuse to fund such corrective action.

Mr. Tormey noted that the RBCA model was a two-dimensional screening tool, however not a decision maker. He stated the DNR felt they needed the discretionary authority to make decisions affecting the third dimension created by a high volume pumping water well receptor, and he expected the need to use the authority would occur on a limited basis.

Mr. Hall explained to the Board that the use of the RBCA modeled data was partly scientific, but also partly the art of the interpretation. Mr. Beech replied that the screening was 3 times over-predictive to provide a buffer for those variations in interpretation.

Mr. Scheidel noted the DNR was to take the rule back to the ARC on May 13, 2008. Mr. Beech suggested the Board discuss a response to the rule, when it was revealed. Mr. Tormey stated he felt the stakeholder meetings were largely productive with good discussion. Ms. Voss inquired about how other states handle site assessment. Mr. Norris stated that from his experience with other states, he had concluded that Iowa's model was significantly over-predictive by comparison. Mr. Beech opined that the rule should be written based upon what was agreed to by all stakeholders—the model recalibration alone, and then further compromise could be ongoing with regard to water supply interests. The longer the debate continues without the adoption of the new model in rule, the longer the Board pays for work required by a model that is 8 times over-predictive.

Mr. Scheidel promised to notify the Board when he received a copy of the rule to be noticed.

C. Adoption of UST Removal Rule

Mr. Scheidel presented the Iowa UST Fund Board rule regarding UST removal. He also included a copy of comment submitted from the DNR regarding the rule. More specifically, the DNR objected to the statute language that the rule was pursuant to and wanted the Board to expand the rule language to include UST removal benefits to individuals who are not the UST Fund claimant, which would be contrary to the statute. The DNR comment suggested the Board file the rule in opposition to the statute, because the statute was deemed by DNR to be unconstitutional. Mr. Scheidel responded to the comment stating the Board members didn't think it was their role to oppose statutory language.

Mr. Scheidel noted that the Board had maintained a 28E agreement with the DNR for UST removal on sites with ineligible claimants through the Tank Closure Contracts, and the DNR had the authority to add sites to those projects to complete UST removal on at-risk sites.

Mr. Steward noted that the rule had been adopted already and the filing was for minor amendments to the rule. Mr. Holcomb submitted a motion to adopt the amended rule, and Mr. Beech seconded the motion. Motion passed 6-0. Mr. Scheidel said he would file the adoption.

D. DNR Update

Brian Tormey of DNR reported that three staff members were currently attending the Environmental Protection Agency (EPA) Region VII meeting. He also stated he had attended a meeting for the Association of State and Territorial Solid Waste Management Officials, which included a tanks program, so that he could obtain more shared knowledge from other states regarding tanks. Lastly, he noted that he had a meeting scheduled with the field office bureau chief, legal services staff, Elaine Douskey (LUST) and Tom Collins (UST) to discuss compliance priorities in the tanks area for the next fiscal year in order to set up the budget for the field offices.

Mr. Scheidel stated he had a very positive meeting with the DNR regarding the 28E agreements for tank tag fees and for NFA funding. He explained that he was currently awaiting the drafts from DNR of those agreements based on what was agreed at that meeting.

PROGRAM BILLINGS

Mr. Scheidel presented the current monthly billings to the Board for approval.

1. Aon Risk Services.....\$122,726.00
Consulting Services – May 2008 (\$57,513.00)
Claims Processing Services – May 2008 (\$55,213.00)
2. Attorney General’s Office.....\$9,896.22
Services provided for March 2008
3. Iowa Department of Revenue\$1,672.80
Environmental Protection Charge collection
Jan – Mar 2008
4. Iowa Department of Inspections & Appeals.....\$105.63
Administrative Hearings on behalf of the Iowa UST Fund Board
Jan – Mar 2008

No additional billings for outside cost recovery counsel were presented by the Attorney General’s office for this meeting. On a motion by Mr. Holcomb and a second by Ms. Johnson, the billings were approved by a vote of 6-0.

MONTHLY ACTIVITY REPORT

Mr. Scheidel noted that the March activity report, financials and opt-in report were in the Board packets for the Board members to review. He highlighted the high number of closed remedial claims resulting from the Coastal Mart settlement.

ATTORNEY GENERAL'S REPORT

Mr. Steward addressed the Board to request an advance, not to exceed \$1,500, for costs for attending the annual tank conference in Charleston, SC in June. He noted that the New England Interstate Water Pollution Control Commission (NEIWPCC) had always reimbursed the Iowa UST Fund in past years for his costs, and he had submitted a request for reimbursement again this year.

Mr. Beech made a motion to approve the advance for Mr. Steward, and Mr. Holcomb seconded the motion, which was approved 6-0.

CLAIM AUTHORITY

Mr. Gastineau presented the following claim authority requests:

1. Site Registration 8600284 – Lovilia Trading Post, Lovilia

This was a second Board report for this site. Following an earlier excavation, soil contamination was left and all vapor pathways remain high risk at this site. At a corrective action meeting, it was agreed to excavate as much of the remaining contamination as possible in those areas closest to the receptors that render the site high risk. Contaminated soil would be left with buildings and Iowa DOT right-of-way hindering a complete excavation. Additional post-excavation activities would likely be required. Previous authority to \$220,000 had been granted, and \$190,187.54 was incurred to date. Additional authority to \$300,000 as requested for a site monitoring report (SMR), a possible corrective action design report (CADR), and implementation of the excavation.

A motion to approve the claim authority was submitted by Mr. Holcomb and seconded by Mr. Beech. Approved 6-0.

2. Site Registration 8604171 - Action Auto Sales & Repair LLC, Sioux City

This was a second Board report for this site that was classified low risk, pending the closure of the Sioux City water well field. Once the well field is closed, the site would be no action required (NAR) with free product recovery. Monitoring will not be required. DNR had requested more aggressive free product recovery. A multi-well FAP system of free product recovery had been installed with marginal results to date. Previous authority to \$125,000 had been granted, and \$124,578.94 was incurred to date. Additional authority to \$200,000 was requested for free product recovery (FPR) activities.

Mr. Holcomb submitted a motion to approve the claim authority, and Mr. Beech seconded the motion. Approved 6-0.

3. Site Registration 8608248 – Heartland Coop, Gilman

This site was classified high risk for all soil and groundwater vapor pathways. An excavation budget was approved in 2001 and completed in 2002, but site conditions made it necessary to expand the excavation size from 500 to 750 yards. Free product and monitoring activities had been ongoing, but the groundwater professional had overlooked billing and submitting reports until March 28, 2008. The last monitoring report submitted had recommended reclassification to no action required (NAR). Previous authority to \$75,000 had been granted, and \$77,022.00 was incurred to date. Additional authority to \$135,000 was requested for the SMR's.

Mr. Beech submitted a motion to approve the claim authority, and Mr. Holcomb seconded the motion, which was approved 6-0.

4. Site Registration 8913807 – Karean's Flowers, Guthrie Center

This was the second Board report for a site that was classified high risk. The site specific target levels (SSTL's) for the groundwater ingestion pathway had not been met. An additional two years of system operation and monitoring were expected before the SSTL's will be met or the system will have provided its maximum benefit and other options may then be considered. Previous authority to \$300,000 had been granted, and \$295,168.02 was incurred to date. Additional authority to \$412,500 was requested for SMR's, operation and maintenance, and utilities.

Mr. Holcomb submitted a motion to approve the claim authority, and Mr. Hall seconded the motion, which was approved 6-0.

5. Site Registration 8606246 – Country Stores of Carroll, Coon Rapids

This site was classified high risk for a municipal well and low risk for the protected groundwater source, potential to confined space, and potential sanitary source pathways. The plume was merged with an aboveground tank facility adjacent to the site owned by the same party. Costs had been separated. A completed risk based correction action (RBCA) Tier III report recommended the drinking water well be reclassified from high risk to no action required, as a receptor. Previous authority to \$75,000 had been granted, and \$74,328.47 was incurred to date. Additional authority to \$115,000 was requested for a SMR, FPR, and a possible CADR and implementation of the CADR.

Mr. Beech submitted a motion to approve the claim authority, and Mr. Holcomb seconded the motion, which was approved 6-0.

Site Registration 7910394 – ConocoPhillips, Davenport

This site was classified high risk for the soil leaching to groundwater ingestion pathway for the protected groundwater pathway. It appeared that an on-site restrictive covenant prohibiting the installation of water wells could reclassify this pathway to no action required (NAR). The site was also low risk for the groundwater ingestion to protected groundwater source pathway (the restrictive covenant would not reclassify this pathway), and the soil vapor to confined space non-residential pathway. Several more years of low risk monitoring would likely be necessary before the low risk pathways and the site could be reclassified to NAR. Previous authority to \$75,000 had been granted, and \$96,987.95 was incurred to date. Additional authority to \$130,000 was requested for more SMR's.

Mr. Holcomb submitted a motion to approve the claim authority, and Mr. Hall seconded the motion, which was approved 6-0.

Site Registration 8605033 – Pottawattamie County Development Corp, Council Bluffs

This was the third Board report for this high risk site. An excavation was being completed at the site, and higher than expected contaminant concentrations had been encountered along the southern edge of the excavation. Additional excavation beyond what was previously approved was recommended to remove this contamination while the excavator still had the hole open. If not removed, the site would remain high risk for the vapor pathways and additional corrective action might be necessary. Previous authority to \$418,813.11 had been granted, and \$134,022.86 was incurred to date. Additional authority to \$525,000 was requested for a SMR and implementation of the excavation.

Mr. Holcomb submitted a motion to approve the claim authority, and Mr. Hall seconded the motion, which was approved 6-0.

CONTRACTS ENTERED INTO SINCE THE MARCH 27, 2008 BOARD MEETING

Mr. Scheidel noted that the Board had entered into two agreements or contracts since the last Board meeting. Both contracts with Array Environmental were extended for one year for two community remediation projects – Sexton & Wesley and College Springs & Coin projects.

OTHER ISSUES

Mr. Scheidel reported to the Board that the Auditor's exit interview was completed, and the Auditor's updated GASB report to legislators would now include the Iowa UST Fund's negative balance projections based on Fund liabilities.

Also, Mr. Scheidel noted that the next Board meeting was scheduled for Friday, May 23rd 10 A.M., however due to the holiday weekend Board members decided to hold the meeting on Thursday, May 22nd at 10AM. Ms. Voss indicated she would be unable to chair the meeting.

CORRESPONDENCE AND ATTACHMENTS

Ms. Voss asked if there was any further business, and there being none, Ms. Johnson moved to adjourn, and Ms. Lincoln seconded the motion. By a vote of 6-0, the Board adjourned at 11:32 A.M.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Scott M. Scheidel". The signature is written in a cursive, flowing style with a large initial 'S'.

Scott M. Scheidel
Administrator